IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1293 OF 2004

IN

CIVIL APPLICATION NO. 819 OF 2002

IN

CIVIL APPLICATION NO. 861 OF 2001

IN

APPEAL FROM ORDER NO. 727 OF 2001

IN

NOTICE OF MOTION NO. 3483 OF 2001

IN

B.C.C.C. SC SUIT NO. 4298 OF 2001

Smt. Regina Selvaraj ... Appellant
(Orig.Plaintiff)

versus

Mr. Rajesh Kumar Pathania ... Respondent
(Orig.Defendant)

And

Hindustan Transmission
Products Limited ... Applicants

...

Mr. Shyam Diwan with Mr. H.K. Sudhakara, for the Applicants.

Mr. Sunil Singh, for the Respondents.

...

CORAM : A.M.KHANWILKAR,J.

17th December 2004

P.C.:

. This application has been filed for recalling the order dated 17th August 2002 whereby Civil Application No. 819 of 2002 has been dismissed for default. The Applicants assert that they had no knowledge about the fact that Civil Application No. 819 of 2002 has been dismissed for default on 17th August 2002; and that fact came to their notice, for the first time, on 10th September 2004 when it was mentioned before the Court at the hearing of the same Civil Application No. 819 of 2002. In that backdrop, the present application has been filed for recalling the order dated 17th August 2002. In response to the Civil Application, reply has been filed asserting that the Applicants had knowledge about the dismissal of the Civil Application No. 819 of 2002 on 17th August 2002. It is asserted by the Respondents in this application (Appellants) that after the dismissal of the said Civil Application, in fact, parties

made efforts to compromise with full knowledge of the dismissal of the application. This assertion has, however, been countered by the Applicants by filing rejoinder affidavit. According to the Respondents-Appellants, the meeting for compromise took place in which settlement talks were deliberated. The date on which alleged compromise talks took place has been denied by the Applicants by placing on record that at the relevant time, the concerned Advocate in relation to whom knowledge has been attributed was out of station. In other words, the factum regarding knowledge of dismissal of said application is only word against word. There is no reason to doubt the plea taken by the Applicants that they had no knowledge about the dismissal of the Civil Application. If they had knowledge about the dismissal, there was no reason for them to still get Civil Application No. 819 of 2002 circulated and which application was, in fact, heard on more than one date after 17th August 2002 by this Court, on the assumption that the same is pending. Taking overall view of the matter and especially in the light of the allegations made in the Civil Application No. 819 of 2002, in the interest of justice, I think it appropriate that

the prayer in the present application deserves to be granted, though there is some delay in filing the present application. In my opinion, therefore, as sufficient cause has been made out and in the interest of justice, it is necessary to condone the delay in filing the present application. Accordingly, application is allowed in terms of prayer clauses (a) and (f). Civil Application No. 819 of 2002 is restored to the file to be heard on merits.

. Counsel for the Respondents-Appellants prays for two months' time to proceed with the hearing of that application. This request is on the face of it unacceptable. Therefore, I see no reason to accede to this request. Place the Civil Application No. 819 of 2002 on 22-12-2004. To be included in the Supplementary List. Parties to exchange pleadings, if any, in the meantime.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)